

FLORIDA PUBLIC SERVICE COMMISSION  
Capital Circle Office Center • 2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

M E M O R A N D U M

May 29, 1997

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF APPEALS (MOORE) *CTM DESIX gsw*  
DIVISION OF WATER & WASTEWATER (HILL, WILLIAMS, SHAFER)  
DIVISION OF RESEARCH & REGULATORY REVIEW (HEWITT) *CBT*

RE: DOCKET NO. 960258-WS - PETITION TO ADOPT RULES ON MARGIN  
RESERVE AND IMPUTATION OF CONTRIBUTIONS-IN-AID-OF-  
CONSTRUCTION ON MARGIN RESERVE CALCULATION, BY FLORIDA  
WATERWORKS ASSOCIATION

AGENDA: 6/10/97 - REGULAR AGENDA - PARTIES MAY PARTICIPATE

RULE STATUS: RULE PROPOSED 7/16/96 - SHOULD NOT BE DEFERRED

SPECIAL INSTRUCTIONS: I:\PSC\APP\WP\960258-3.RCM  
THIS RECOMMENDATION CONTAINS A PRELIMINARY ISSUE THAT  
SHOULD BE TAKEN UP BEFORE THE RECOMMENDATION DATED  
APRIL 2, 1997, THAT WAS DEFERRED FROM THE 4/14/97 AGENDA  
CONFERENCE. APPROVAL OF THE PRIMARY STAFF RECOMMENDATION  
ON ISSUE A WILL RENDER A VOTE ON THE APRIL 2, 1997,  
RECOMMENDATION UNNECESSARY.

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CASE BACKGROUND

On March 1, 1996, the Florida Waterworks Association (FWA) petitioned the Commission to adopt a rule on margin reserve for water and wastewater utilities. By Order No. PSC-96-0586-FOF-WS, issued May 6, 1996, the Commission granted FWA's petition, but declined to propose the rule it advocated. On July 16, 1996, the Commission voted to propose rules codifying existing practices and to schedule a hearing. A notice of rulemaking was issued on July 26, 1996, and published in the Florida Administrative Weekly (FAW) on August 2, 1996. The rulemaking hearing before the Commission was held on December 10, 1996. The Office of Public Counsel (OPC), FWA, Southern States Utilities, Inc., now known as Florida Water Services Corporation (SSU/FWSC), Utilities, Inc., the St. Johns River Water Management District, the Southwest Florida Water Management District, the South Florida Water Management District, and the Department of Environmental Protection participated in the hearing.

DOCUMENT NUMBER-DATE

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Staff filed its recommendation to adopt the rule with changes on April 2, 1997. The rule was scheduled for consideration by the Commission at its April 14, 1997, agenda conference, but was deferred.

In addition to this proceeding, FWA filed a Petition for Administrative Determination of Invalidity of Proposed Rules at the Division of Administrative Hearings (DOAH) on August 14, 1996. SSU/FWSC filed a similar petition on August 23, 1996. The consolidated proceedings have been abated until May 30, 1997.

### DISCUSSION OF ISSUES

ISSUE A: Should the Commission take additional evidence on the issue of the rule's impact on rates?

PRIMARY RECOMMENDATION: Yes, the Commission should schedule another hearing to take additional evidence on the issue of the rule's impact on rates if the hearing can be scheduled within the next two months. (MOORE, HILL, WILLIAMS)

ALTERNATIVE RECOMMENDATION 1: Yes, the Commission should take additional evidence; however, a hearing is not necessary. The additional staff analyses of the impact on rates should be filed and interested persons given the opportunity to file responses. (MOORE, HILL, WILLIAMS)

ALTERNATIVE RECOMMENDATION 2: No, the Commission should not take additional evidence. The Commission has followed all required rulemaking procedures and interested persons have been given an opportunity to address the Commission and submit information on the impact of the proposed rule and FWA's alternative proposal. (MOORE, HILL, WILLIAMS)

STAFF ANALYSIS: During the course of the 1997 legislative session, staff was asked by two senators to analyze the rate impact of a legislative proposal to prescribe margin reserve periods for water and wastewater utilities. Staff based its analysis on the proposed legislation which would have required the Commission to allow a seven-year margin reserve period for both treatment and lines. Staff was also asked to develop several hypothetical utility scenarios to explore the potential impact of the pending legislation. The information was provided to members of the legislature and other interested persons but is not in the record of this proceeding.

Senator Anna Cowin, in a letter to Chairman Johnson dated May 6, 1997, asks that the Commission hold public hearings and provide

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notice in local newspapers throughout Florida about the effect of the rule changes on rates. Senator Cowin asserts that the rule that staff is recommending differs greatly from the rule proposed by the Commission and published in the FAW, and that ratepayers have not had adequate notice of the change. FWA filed a response to Senator Cowin's letter on May 16, 1997. FWA states that OPC has the responsibility of representing the citizens of Florida, and has participated fully in this docket. FWA contends that it is not appropriate to further delay this proceeding, and there has been no allegation that any new relevant evidence could be produced.

**PRIMARY STAFF ANALYSIS:** Although the Commission has complied with all requirements for notice, and although staff agrees with FWA that all citizens were represented by OPC, there is additional information available on the potential impact that changes to the proposed rules might have on rates that staff believes is relevant. Staff believes that the Commission, the parties and other interested persons will benefit from having the opportunity to review the additional information, as well as the opportunity to ask questions of staff and any other persons submitting evidence on this issue. Since the purpose of a rulemaking proceeding is for the Commission to inform itself as fully as possible prior to adopting a rule, staff believes that it would be proper for the Commission to consider the additional information.

Multiple hearings held around the state are not required or contemplated in the statutory provisions on rulemaking, and staff is hesitant to recommend the expense of holding multiple hearings--an expense that is ultimately borne by the ratepayers. Staff believes that holding a hearing at a central location may offer a better opportunity for participation; however, there are additional expenses associated with that also.

In view of the fact that this rulemaking was initiated by a petition filed over one year ago, that a hearing has already been held, and that there is a pending DOAH rule challenge proceeding, if an additional hearing is to be held, it should be conducted as soon as possible. Possible hearing dates are July 18 or July 31, 1997. The next open date after July is not until January, 1998, and staff believes a delay of that length would be unreasonable.

If a hearing is scheduled, notice should be provided as required by statute and Commission rules. Persons who intend to participate in the hearing should be required to prefile any exhibits they intend to introduce two weeks before the hearing date to allow other participants time to obtain copies and review them prior to hearing. Copies should be furnished to all parties in this docket as of this date by each person filing an exhibit.

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**ALTERNATIVE ONE STAFF ANALYSIS:** Staff's first alternative recommendation is for the Commission to take additional evidence on the rule's potential impact on rates without holding a hearing. The additional staff analyses and other evidence on the potential impact could be filed and interested persons would be given an opportunity to respond. This alternative provides the benefits of the primary recommendation with less delay than if another hearing is held; however, the Commission and parties would not have the opportunity to question persons sponsoring the additional evidence.

If the Commission approves this alternative, any person who wishes to submit additional evidence should be required to do so by June 30, 1997. Each person should be required to furnish copies to all parties in the docket as of this date. Responses should be filed by July 21, 1997, and copies provided to the current parties and to any persons submitting additional evidence.

**ALTERNATIVE TWO STAFF ANALYSIS:** The legislature has provided for the method and form of notice and the manner of conducting rulemaking proceedings, including notice of proceedings that are initiated by petition. The legislature has also provided for an agency to make changes to proposed rules during the course of a rulemaking proceeding. Presumably, the notice requirements in the statute are the ones the legislature has decided provide adequate notice to the public. Since the Commission has complied with all of those requirements, it is incorrect to say that ratepayers were not adequately noticed.

In addition, OPC, who represents the ratepayers, participated in this proceeding from its beginning, and in a workshop prior to that. OPC was well aware that the FWA petitioned the Commission to adopt a rule providing for a five-year margin reserve period with no imputation of contributions-in-aid-of-construction (CIAC). OPC is also well aware that pursuant to statute, the rule proposed by the Commission is subject to change based on the record of the proceeding. Moreover, OPC, as well as the water and wastewater utilities and other parties, participated in the proceedings to date with the expectation that the Commission would make a decision based on this record.

All interested persons were given an opportunity to address the Commission and submit information on the potential impact of the proposed rule and FWA's alternative proposal by written comments, at the hearing that was held December 10, 1996, and in posthearing submissions. Staff recommends that the Commission not schedule an additional hearing in this docket, but proceed to decide the April 2, 1997, recommendation to adopt Rule 25-30.431 with changes.